

Matthew G. English (SBN 204869)  
LAW OFFICES OF MATTHEW G. ENGLISH  
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Attorney for Plaintiff JAMES SCOTT

FILED

2008 APR 23 PM 12:13

CLERK US DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

BY YWH DEPUTY

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

JAMES SCOTT,  
Plaintiff,

vs.

MICHAEL CHERTOFF, SECRETARY,  
DEPARTMENT OF HOMELAND SECURITY.  
Defendants

Case No.: **'08 CV 0735 BTM JMA**

**COMPLAINT FOR DISABILITY  
DISCRIMINATION, REPRISAL/RETALIATION,  
AND AGE DISCRIMINATION**

**JURY TRIAL DEMANDED**

Plaintiff JAMES SCOTT complains and alleges as follows:

**JURISDICTION**

1. This Court has jurisdiction under 28 U.S.C. § 1331, the Vocational Rehabilitation Act of 1973, and the Age Discrimination in Employment Act of 1967.

**VENUE**

2. Venue is proper in the Southern District of California as the judicial district in which the unlawful employment practices occurred and in which relevant employment records are maintained and administered.

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**PARTIES**

3. Plaintiff JAMES SCOTT is, and at all relevant times, was a resident of the State of California, County of San Diego, employed by the Department of Homeland Security as a Criminal Investigator until his termination/removal in March 2007.

4. Defendant, MICHAEL CHERTOFF, is the Secretary of the Department of Homeland Security, and is sued in that capacity as head of the Department of Homeland Security.

**FACTS COMMON TO ALL CAUSES OF ACTION**

5. Plaintiff worked for the Federal Protective Service (FPS) for 16 years, primarily as a criminal investigator GS-1811-12. Plaintiff was terminated in March 2007. Formally organized under the General Services Administration (GSA), the FPS is currently, and was at the time of Plaintiff's termination, part of the U.S. Immigration and Customs Enforcement (ICE), Department of Homeland Security (DHS).

6. Plaintiff engaged in EEO activity as a witness in or about 1998. Plaintiff also filed pleadings with the U.S. Court of Appeal in or about 2005.

7. In the past, Plaintiff has suffered from respiratory ailments (recurring rhinitis or sinusitis) and suffered a work-related upper arm/shoulder injury. Plaintiff filed workers compensation claims regarding these ailments/injuries, all of which have medically resolved. Defendant has at all relevant times regarded Plaintiff as having a disability within the meaning of the Vocational Rehabilitation Act of 1973.

8. Plaintiff is and, at all relevant times hereto, was over 40 years of age. Plaintiff was born November 20, 1954.

9. After Plaintiff engaged in prior EEO activity and after Defendant became aware of Plaintiff's physical ailments, Defendant embarked upon a campaign of retaliatory conduct designed to embarrass, humiliate, and violate the rights of Plaintiff, and to deprive Plaintiff of the benefits of his employment with Defendant.

10. Defendant's campaign of retaliatory conduct targeting Plaintiff increased after Plaintiff confirmed in writing to Defendant that Plaintiff turned 50 years of age.

11. Defendant made repeated impermissible and unwarranted inquiries into Plaintiff's medical history and made invasive and unnecessary requests for Plaintiff's medical records.

12. In 2005, Plaintiff was ordered to submit to medical and psychological examination, surrender his service weapon, and ordered to provide medical information.

13. In or about January 2005, Defendant wrongfully removed Plaintiff's law enforcement authority on the basis of his temporary repetitive-motion shoulder injury. Several months later, Plaintiff was fully cleared for duty by Kaiser Permanente/Department of Occupational Medicine, which had ceased all treatment of Plaintiff. Defendant never returned Plaintiff's law enforcement authority.

14. In or about April 2005, agency officials attempted to classify Plaintiff as having "mental health issues" in further retaliation and harassment of Plaintiff.

15. On or about May 14, 2006, Plaintiff was suspended from duty for fourteen days, purportedly for failing to carry out instructions of a superior.

16. Defendant's medical examination requirements are based upon subjective medical standards and target older employees.

17. Defendant terminated Plaintiff's employment on or about March 5, 2007, because Defendant perceived Plaintiff to be disabled, and/or because of Plaintiff's age, and/or in retaliation for Plaintiff's prior EEO activity.

18. Plaintiff timely and properly exhausted his administrative remedies. Plaintiff filed EEO complaints alleging age discrimination, disability discrimination and retaliation on September 15, 2005, September 5, 2006, October 18, 2006, December 5, 2006, January 5, 2007 and March 7, 2007, (DHS Case Nos. IC-05-W391, HS-06-ICE-002644). More than 180 days have elapsed since Plaintiff initiated EEO proceedings, permitting him to bring this action in federal court. 42 U.S.C. § 2000e-16(c).

#### **FIRST CAUSE OF ACTION**

#### **DISABILITY DISCRIMINATION (VOCATIONAL REHABILITATION ACT OF 1973)**

19. Plaintiff hereby realleges and incorporates by reference, as though fully set forth herein, the allegations contained in each and every preceding paragraph of this complaint.

1 20. Plaintiff was at all material times a federal employee covered by the Vocational  
2 Rehabilitation Act of 1973 which prohibits discrimination in employment on the basis of  
3 disability.

4 21. Defendant is, and at all material times was, an employer within the meaning of  
5 Vocational Rehabilitation Act of 1973 and, as such, is barred from discriminating in employment  
6 decisions on the basis of disability.

7 22. Defendant has at all relevant times regarded Plaintiff as having a disability within the  
8 meaning of the Vocational Rehabilitation Act of 1973.

9 23. Defendant discriminated against Plaintiff on the basis of disability in violation of  
10 Vocational Rehabilitation Act of 1973 by engaging in a continuing course of conduct which has  
11 included, but is not limited to, at least some of the acts alleged above, including terminating  
12 Plaintiff because Defendant perceived Plaintiff as disabled.

13 24. As a proximate result of Defendant's discrimination against Plaintiff, Plaintiff has suffered  
14 and continues to suffer substantial losses in earnings, bonuses, deferred compensation, and other  
15 employment benefits and has suffered, and continues to suffer, embarrassment, humiliation and  
16 mental anguish, all to his damage in an amount according to proof.

17 25. As a result of Defendant's discriminatory acts as alleged herein, Plaintiff is entitled to his  
18 attorneys' fees and costs of suit as provided by the Vocational Rehabilitation Act of 1973.

19 WHEREFORE, Plaintiff requests relief as hereinafter provided.

20 **SECOND CAUSE OF ACTION**

21 **RETALIATION**

22 26. Plaintiff hereby realleges and incorporates by reference, as though fully set forth herein,  
23 the allegations contained in each and every preceding paragraph of this complaint.

24 27. By virtue of the conduct set forth above, plaintiff was subjected to unlawful retaliatory  
25 conduct which commenced after having engaged in protected activity and from which a  
26 retaliatory motive can be inferred.

27 WHEREFORE, Plaintiff requests relief as hereinafter provided.  
28

**THIRD CAUSE OF ACTION**

**AGE DISCRIMINATION IN VIOLATION OF THE AGE DISCRIMINATION IN EMPLOYMENT**

**ACT OF 1967**

28. Plaintiff hereby realleges and incorporates by reference, as though fully set forth herein, the allegations contained in each and every preceding paragraph of this complaint.

29. Plaintiff was at all times material hereto an employee covered by the Age Discrimination in Employment Act, 29 U.S.C. § 621 et seq., prohibiting discrimination in employment on the basis of age.

30. Defendant is, and at all times material hereto was, an employer within the meaning of the Age Discrimination in Employment Act, 29 U.S.C. § 621 et seq., and, as such, barred from discriminating in employment decisions on the basis of age.

31. Defendant discriminated against Plaintiff on the basis of age in violation of the Age Discrimination in Employment Act, 29 U.S.C. § 621 et seq., by engaging in a course of conduct which included, but is not limited to, at least some of the acts set forth above.

32. As a proximate result of Defendant's discrimination against Plaintiff, Plaintiff suffered losses in earnings, bonuses, deferred compensation and other employment benefits. Plaintiff is entitled to an amount of liquidated damages, equal to the amount of back pay and other economic benefits, due to the willfulness of Defendants' violation of Plaintiff's rights under the Age Discrimination in Employment Act.

33. As a result of Defendant's discriminatory acts as alleged herein, Plaintiff is entitled to reasonable attorneys' fees and costs of suit as provided by 29 U.S.C. § 216(b), 626(b).

WHEREFORE, Plaintiff requests relief as hereinafter provided.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff requests relief as follows:

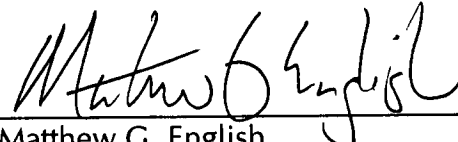
1. For damages according to proof including loss of earnings, deferred compensation and other employment benefits;
2. For compensatory damages for losses resulting from humiliation, mental anguish, harm to reputation and emotional distress according to proof;

3. For interest on the amount of losses incurred in earnings, deferred compensation and other employee benefits at the prevailing rates;
4. For reinstatement of Plaintiff to the position from which he was wrongfully terminated or a comparable position in Defendant's organization and all benefits attendant thereto that would have been afforded Plaintiff but for said wrongful conduct;
5. That Defendant, his agents, successors, employees and those acting in concert, be enjoined permanently from engaging in each of the unlawful practices, policies, usages and customs set forth herein;
6. For costs of suit incurred herein including attorney's fees;
7. For such other relief as the Court may deem just and proper.

LAW OFFICES OF MATTHEW G. ENGLISH

DATED: April 21, 2008

By:

  
Matthew G. English  
Attorney for Plaintiff  
JAMES SCOTT

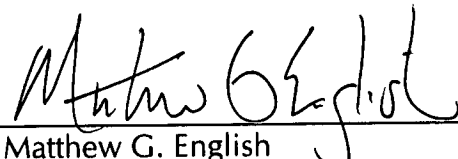
**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a jury trial in the above action.

LAW OFFICES OF MATTHEW G. ENGLISH

DATED: April 21, 2008

By:

  
Matthew G. English  
Attorney for Plaintiff  
JAMES SCOTT

**UNITED STATES  
DISTRICT COURT**  
SOUTHERN DISTRICT OF CALIFORNIA  
SAN DIEGO DIVISION

**# 150117 - MS**

**April 23, 2008  
12:12:02**

**Civ Fil Non-Pris**

USAO #: 08-CV-0735 CIVIL FILING  
Judge..: BARRY T MOSKOWITZ  
Amount.: \$350.00 CK  
Check#.: BC005370

**Total-> \$350.00**

**FROM: SCOTT VS. CHERTOFF  
CIVIL FILING**

JS 44 (Rev. 12/07)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**

JAMES SCOTT

(b) County of Residence of First Listed Plaintiff San Diego  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Law Offices of Matthew G. English, 7676 Hazard Center Dr  
Ste 500, San Diego CA 92108-4508; (619) 725-2725

**DEFENDANTS**

MICHAEL CHERTOFF, SECRETARY, DEPARTMENT OF  
HOMELAND SECURITY

County of Residence of First Listed Defendant SOUTHERN DISTRICT OF CALIFORNIA  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE  
LAND INVOLVED.

Attorneys (If Known)

Office of the U.S. Attorney

08 CV 0735 BTM JMA

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<b>FORFEITURE/PENALTY</b> <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<b>BANKRUPTCY</b> <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<b>OTHER STATUTES</b> <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input checked="" type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

**V. ORIGIN**

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity):  
Vocational Rehabilitation Act of 1973, Age Discrimination in Employment Act of 1967

Brief description of cause:  
Discrimination (age/perceived disability); Retaliation.

**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

04/21/2008

SIGNATURE OF ATTORNEY OF RECORD

*Matthew G. English*

FOR OFFICE USE ONLY

RECEIPT #

150117

AMOUNT

\$350

APPLYING IFP

JUDGE

MAG. JUDGE

MS 4/23/08

ch